



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

July 19, 2018

VIA EMAIL AND FED EX

Mr. Christopher Calfee
Deputy Secretary and General Counsel
California Natural Resources Agency
1416 9th Street, Suite 1311
Sacramento, CA 95814

Dear Mr. Calfee:

Comments on the Proposed 15-Day Revisions to the CEQA Guidelines

The Metropolitan Water District of Southern California (Metropolitan) reviewed the Proposed 15-Day Revisions to the CEQA Guidelines (Proposed Update). Metropolitan appreciates that the California Natural Resource Agency addressed a number of its prior comments, and is pleased to submit these additional comments for consideration by the Agency during the public comment period for the Proposed Update.

Background

Metropolitan is a public agency and regional water wholesaler. It is comprised of 26 member public agencies that serve approximately 19 million people in portions of six counties in Southern California, including Los Angeles, Ventura, Orange, Riverside, San Bernardino, and San Diego Counties. Metropolitan's primary sources of imported water come from the California State Water Project (SWP) and from the Colorado River via the Colorado River Aqueduct (CRA). Metropolitan's mission is to provide its 5,200 square mile service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way. Consistent with this mission, Metropolitan provides the following comments on the Proposed 15-Day Revisions:

1. Determining the Significance of Transportation Impacts § 15064.3(a) Purpose

Metropolitan Comment: Senate Bill 743 directed the Office of Planning and Research (OPR) to adopt guidelines "pursuant to Section 21083 establishing criteria for determining the significance of transportation impacts of projects within transit priority areas." There either needs to be a clear distinction between using Vehicle Miles Traveled (VMT) for analysis of impacts of a project within transit priority areas versus the impacts of a project outside priority

Mr. Christopher Calfee
Page 2
July 19, 2018

areas, or the OPR needs to state that it is their intent to apply VMT to all project types in all locations.

Metropolitan Proposal

Metropolitan recommends providing a clear distinction between using Vehicle Miles Traveled (VMT) for analysis of impacts of a project within transit priority areas versus the impacts of a project outside priority areas, in order to be consistent with Section 15064.3(b), and providing additional clarification.

2. Determining the Significance of Transportation Impacts § 15064.3(b) Criteria

Metropolitan Comment: This section provides criteria specifically for land use and transportation project in subsections (1) and (2) respectively. However, there is no guidance for the many other project types that require analysis under CEQA. This section needs to address other types of projects outside of transit priority areas. If the intent was to analyze other project types “qualitatively” in accordance with subsection (3), it is unclear how “availability of transit, proximity to other destinations . . .” is applicable to (for example) a utility construction or maintenance project in a rural undeveloped area. Furthermore, subsection (3) states that a “qualitative analysis of construction traffic may be appropriate.” There is no guidance on how to qualitatively analyze construction traffic, nor how that relates to a quantitative analysis of Vehicle Miles Traveled. This is problematic in that lead agencies are required to provide substantial evidence in the record to support their findings. Qualitative analysis increases risk of legal arguments as opposed to quantitative methodologies.

Metropolitan Proposal

Metropolitan recommends that a new subsection called “Other projects” be created, and provide guidance and methodology for analyzing impacts of other project types outside of transit priority areas.

3. Updating the Environmental Checklist – Proposed Amendments to Appendix G

OPR proposes to reorganize and revise Appendix G to eliminate redundancy, reframe or delete certain questions more properly dealt with in the planning process, and add certain questions it contends are required by existing law but are often overlooked. Metropolitan believes most of the proposed revisions appear to be of a common sense and non-controversial nature however, some clarification regarding the relevant information is requested.

A. Aesthetics - Proposed Revision to Appendix G § I(c)

Mr. Christopher Calfee

Page 3

July 19, 2018

Metropolitan Comment: Regarding Aesthetics Item (c), the statement addresses whether a project conflicts with zoning rather than physical environmental impacts. Also, the term “scenic quality” is subjective and ambiguous as it is not clear what it means to mitigate scenic quality, and Metropolitan suggests using “scenic resources,” which is already in the regulations. Suggested text on this section is double underlined.

Metropolitan Proposal

Revise proposed text in the Aesthetics question of Appendix G§ I(c):

c) Substantially degrade the existing character or quality of public views of the site and its surroundings? If the project is in an urbanized area, would the project cause a significant impact due to conflict with applicable zoning and other regulations governing relating to scenic quality resources?

B. Biological Resources – Proposed Revision to Appendix G § IV(c)

Metropolitan Comment: Regarding the proposed language addition of state or federally protected wetlands, the term “protected” is not defined. Previously this section referenced Section 404 of the Clean Water Act, a federal regulation which “protects” and regulates impacts to wetlands. When using the term “protected” it is helpful to have a reference to which regulation specifically protects and regulates the resource. Suggested text on this section is double underlined.

Metropolitan Proposal

Revise proposed text in the Biological Resources question of Appendix G§ IV(c):

c) Have a substantial adverse effect on ~~state or federally protected~~ wetlands as defined by Section 404 of the Clean Water Act protected under state or federal law, (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

C. Energy Impacts – Proposed Revisions to § 15064(b)(2) & Appendix G § VI (a)

Metropolitan Comment: It is not clear what is meant by the term “wasteful, inefficient, or an unnecessary consumption of energy” located in question (a), and no guidance has been provided on establishing a threshold, nor methodology to quantify the impacts from the use of energy. A

Mr. Christopher Calfee

Page 4

July 19, 2018

definition or metrics should be provided for clarification. At a minimum, the threshold should be whether a project would cause “significant” energy impacts. *See Tracy First v. City of Tracy*,

177 Cal. App. 4th 912, 933 (2009) (holding that the city satisfied its Appendix F requirements to analyze energy impacts where the city found that a project would not have significant energy impacts).

Question (a) asks if a project would “result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation?” Per our previous comment, it is difficult to address this without a clear definition of “wasteful inefficient, or unnecessary,” methodology for analyzing, or threshold for analysis. A conflict between a project and a particular plan (even for renewable energy) may not necessarily lead to a significant environmental impact. The analysis should be whether such a conflict will result in significant effects.

D. Transportation – Revisions to Appendix G§ XVII(b)

Metropolitan Comment: This question asks whether the project would “conflict or be inconsistent with CEQA guidelines Section 15064.3, subdivision (b).” It is difficult to answer this checklist question in a meaningful way given the unclear nexus between vehicle miles traveled and a significant impact on the environment; the unclear relation between vehicle miles traveled and a qualitative analysis of construction impacts, especially for projects that are not transportation or land use related; and lack of guidance on thresholds and methodology.

Metropolitan Proposal

Metropolitan suggests rewording for clarity and consistency.

E. Wildfire – Revisions to Appendix G§ XX

Metropolitan Comment: This section states: “If located in or near state responsibility areas or lands classified as very high fire hazard severity zones...” It is problematic to include the words “or near” in this section. There is no clear direction on what distance from a mapped jurisdictional area qualifies as “near”. This open-ended requirement creates additional risk of legal arguments against lead agencies if the distance is subjective. These zones are mapped and established in order to provide additional prescriptive regulations for areas within these boundaries. This question could result in “regulatory creep” outside of these boundaries.

Mr. Christopher Calfee

Page 5

July 19, 2018

Metropolitan Proposal

Metropolitan recommends deleting the words “or near” from this section.

In conclusion, Metropolitan supports OPR’s intent to update the CEQA guidelines and provide an environmental review process that is more efficient, effective, and meaningful for agencies, applicants, and the public. We appreciate the opportunity to work with OPR on these changes and are grateful for the due diligence and outreach provided. If you have any comments or questions concerning the suggested revisions above, please do not hesitate to contact Michelle Morrison at 213-217-7906.

Very truly yours,


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Deirdre Brand

Section Manager, Environmental Planning

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